



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 20, 1997

The Honorable Ben W. Childers
County Attorney
Fort Bend County
309 South Fourth Street, Suite 621
Richmond, Texas 77469-3506

Letter Opinion No. 97-009

Re: Whether, in a civil case in which the litigants have agreed to fund an increase, jurors may receive a jury fee different from that the commissioners court has set and related questions (ID# 39263)

Dear Mr. Childers:

Government Code section 61.001 entitles a petit juror in a civil case to receive reimbursement in an amount between \$5.99 and \$30.01 for each day the juror serves; the section also requires the commissioners court of a county to "annually" set the reimbursement amount. No law (constitutional or statutory) or case authorizes a district judge to set jury fees. You ask whether a district judge may set a jury fee different from that the commissioners court has set in a civil case in which the litigants agree to pay an increase in the jury fees. The district judge may not.

Under Government Code section 61.001(a), a petit juror in a civil case "is entitled to receive" at least six dollars but no more than thirty dollars as reimbursement for travel and other expenses incurred in jury service. Section 61.001(c) requires each county commissioners court to "determine annually" the amount every juror will receive on a daily basis. Of course, the reimbursement amount must be between \$5.99 and \$30.01, and the county must pay the jury fee out of its jury fund.¹ We find no constitutional or statutory provision empowering district judges to set jury fees.

In Fort Bend County, you state, the county commissioners court has set the amount a juror is entitled to receive as reimbursement for jury service at six dollars per day. However, a district judge has asked the district clerk and county treasurer to pay each juror in a civil trial pending before the court fifty dollars per day.² You indicate that the litigants in the case have agreed to pay the forty-four dollar difference to each juror; thus, the judge is not asking the county to increase the amount it pays to jurors from the county's jury fund.

¹Gov't Code § 61.001(c).

²Three district courts--the 240th, 268th, and 328th--serve Fort Bend County. See Gov't Code §§ 24.417, .445, .636. The district court for the 328th judicial district is actually a family district court. See *id.* § 24.636. You do not specify the district court to which you are referring.

In our opinion, the language of Government Code section 61.001(a), (c) precludes the fee increase the judge has requested. Subsection (a) entitles³ a juror to only an amount between \$5.99 and \$30.01. In addition, subsection (c) makes it clear that the jury fee is set by the commissioners court (and no one else) on an annual basis. Thus, all jurors who serve during a given year are entitled to the same daily jury fee.

Furthermore, we find nothing in the constitution or statutes that authorizes a judge to set jury fees or to alter the amount the county commissioners court has determined a juror may receive. While the district judge clearly has jurisdiction of certain civil cases,⁴ we do not believe that jurisdiction includes setting fees in contravention of the commissioners court's order under Government Code section 61.001. Moreover, we do not believe the district court's authority to supervise the commissioners court⁵ encompasses the authority to alter the jury fee as set by the commissioners court unless the commissioners court has abused its discretion,⁶ and you have not contended that it has. In any event, the jury fee that the commissioners court has set is within the range section 61.001(a) specifies.

Our conclusion is analogous to the principle that a public officer may not accept from a third party compensation for performing official duties.⁷ A juror acts as an officer of the court.⁸ Thus, when an individual accepts an appointment to perform jury service, he or she may accept no more than the compensation the county usually pays to others for the same service.

You ask three other questions. First, you ask whether any circumstances exist in which a juror may be paid more than the thirty dollar jury fee Government Code section 61.001(a) sets as a maximum. Consistent with our previous discussion, we conclude that no such circumstances exist. Second, you ask whether litigants who want the jurors to be paid more than the amount the commissioners court has set in accordance with section 61.001(c) are bound by the statute. We conclude that they are. Third, you ask whether the county treasurer may agree to deposit the

³Although Government Code section 61.001(a) appears to create an entitlement, subsection (e) states that the jury fee is not "a property right of a juror or prospective juror for purposes of" Property Code chapters 72 and 74.

⁴Tex. Const. art. V, § 8; Gov't Code § 24.007.

⁵See Gov't Code § 24.020.

⁶See *Mobil Oil Corp. v. Matagorda County Drainage Dist. No. 3*, 580 S.W.2d 634, 638 (Tex. Civ. App.—Corpus Christi 1979), *rev'd on other grounds*, 597 S.W.2d 910 (Tex. 1980) (citing Tex. Const. art. V, § 8; V.T.C.S. art. 1908 (repealed 1985); *Yoakum County v. Gaines County*, 163 S.W.2d 393, 396 (Tex. 1942); *Cook Drilling Co. v. Gulf Oil Corp.*, 161 S.W.2d 1035, 1036 (Tex. 1942); *Tarrant County v. Shannon*, 104 S.W.2d 4, 9 (Tex. 1937); *Stovall v. Shivers*, 129 Tex. 256, 103 S.W.2d 363 (1937); *Nueces County Water Control & Improvement Dist. v. Wilson*, 304 S.W.2d 281, 286 (Tex. Civ. App.—El Paso 1957, writ *ref'd n. r. e.*)).

⁷See Attorney General Opinion JM-57 (1983) at 5 (citing *Kasling v. Morris*, 9 S.W. 739, 740 (Tex. 1888)).

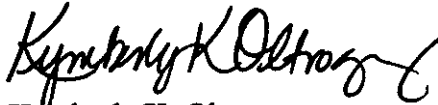
⁸See *Wyle v. State*, 836 S.W.2d 796, 799 (Tex. App.—El Paso 1992, no writ).

litigants' extra jury fee contribution in a noncounty depository and then disburse the money to the jurors. The county treasurer may not.

S U M M A R Y

Unless a court has found that the county commissioners court has abused its discretion in setting a jury fee, the county treasurer may not pay jurors in a specific case a jury fee different from that the county commissioners court has set in accordance with Government Code section 61.001, even though the litigants have agreed to fund the increase. No circumstances exist in which a juror may be paid more than the thirty dollar jury fee Government Code section 61.001(a) sets as a maximum. Litigants in a particular case who want to supplement the jury fee are bound by section 61.001. Finally, the county treasurer may not agree to deposit the litigants' extra jury fee contribution in a noncounty depository and then disburse the money to the jurors.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kimberly K. Oltrogge", with a stylized flourish at the end.

Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee